

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Saddlewood 2000 LP )	
	District 3, Map 40, Control Map 40, Parcel 36.05 )	
	(old parcel identification) )	
	<b>*District 3, Map 63, Control Map 63, Parcel 4</b> )	Marshall County
	(new parcel identification) )	
	Tax years 2005, 2006, 2007 )	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

**Tax Year 2005:**

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$102,700	\$3,691,600	\$3,794,300	\$1,517,720

**Tax Year 2006:**

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$102,700	\$3,742,500	\$3,845,200	\$1,538,080

**Tax Year 2007:**

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
		\$4,600,000	\$1,840,000

The State Board of Equalization ("State Board") has received appeals by the property owner from all of the above assessments. The subject property was appealed to the Marshall County Board of Equalization ("county board") in tax years 2005 and 2007, but not in tax year 2006.

On October 20, 2005, the Marshall County Assessor of Property ("Assessor"), through the attorney for the State Division of Property Assessments (DPA), filed a NOTICE OF COUNTERCLAIM (for tax year 2005) pursuant to State Board Rule 0600-1-.10. DPA attorney Robert T. Lee, whose PETITION FOR INTERVENTION was granted by Administrative Judge Mark J. Minsky by order dated November 21, 2006, filed a MOTION TO DISMISS the taxpayer's 2006 appeal on July 6, 2007.

The undersigned administrative judge conducted a hearing of these appeals on July 19, 2007 in Nashville.<sup>1</sup> The appellant, Saddlewood 2000, L.P. ("Saddlewood"), was represented by registered agent John O. Catignani. Marshall County Assessor of Property Linda Haislip was assisted by Mr. Lee and DPA staff member George C. Hoch, TMA.

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<sup>1</sup>The NOTICE OF HEARING entered by the administrative judge on June 13, 2007 referred only to the appeals relative to tax years 2005 and 2006. The appeal for tax year 2007 was received by the State Board on July 5, 2007. By mutual consent of the parties, all three tax years are addressed in this initial order.

### Findings of Fact and Conclusions of Law

The 7.90-acre parcel in question enjoys what Mr. Catignani conceded was a “nice location” near the Marshall County High School in Lewisburg. Situated on this land is a federally subsidized housing project known as the Saddlewood Apartments. Construction of this Low Income Housing Tax Credit (LIHTC) apartment property was commenced in 2003 and completed in 2005.<sup>2</sup> The complex consists of 58 units in eight separate buildings.<sup>3</sup> Under the terms of the land use restriction agreement (LURA), for an extended period of 30 years, occupancy of all 58 units is restricted to persons with incomes below a certain percentage of the median gross income in the area.<sup>4</sup> Subject to continued compliance with the LURA, the owner was awarded a total of \$4,496,240 in federal income tax credits over a ten-year period ending in 2013.<sup>5</sup> A \$1,200,000 mortgage loan and the proceeds from assignment of the rights to the tax credits covered the lion’s share of the certified cost of the development (\$5,451,697).<sup>6</sup> Exhibit 1.

Karen Anderson, managing member of managing general partner Saddlewood, LLC, testified that the Saddlewood Apartments could not feasibly have been built without the “Section 42” tax credit incentive. Based on her quarterly market surveys, Ms. Anderson believed the subject property’s current rental rates to be approximately 96% of those for comparable apartments in the area. The subject property, she added, has not yet been able to sustain the maximum allowable rents. Ms. Anderson also lamented the unanticipated property tax burden resulting from the LIHTC appraisal methodology that was upheld in Spring Hill, L.P. v. State Board of Equalization, 2003 WL 23099679 (Tenn. Ct. App. 2003).

Noting the above-average size of these apartments, Mr. Hoch perceived a greater disparity between the actual (restricted) and local market rents *per square foot*. Whereas Mr. Catignani projected only a 1% annual increase in rental income, the DPA workhorse foresaw a 2.50%-per-year escalation for the duration of the 30+-year holding period. Thus the reversionary values shown in Mr. Hoch’s DCF spreadsheets were more than twice those of the incredulous agent. Further, as in his analysis of the nearby Acorn Hills LIHTC project, Mr. Hoch maintained that the lesser risk associated with receipt of the tax credits warranted lower discount rates for that portion of the income stream. See Acorn Hills LP/Brisben (Marshall County, Tax Years 2003 and 2004, Initial Decision and Order, October 29, 2007).

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<sup>2</sup>The property owner’s first full year of operation was 2004.

<sup>3</sup>Effective April 27, 2006, the buildings were insured in the amount of \$5,438,160. Exhibit 2.

<sup>4</sup>Many of the occupants of the Saddlewood Apartments are elderly and/or disabled persons. Some of the tenants are eligible for “Section 8” rental assistance from HUD.

<sup>5</sup>The last scheduled tax credit is in the prorated amount of \$386,945.

<sup>6</sup>The assignment of the remaining tax credits for \$3,699,624 occurred after the project was completed.

**Motion to Dismiss (Tax Year 2006).** The taxpayer's appeal concerning the valuation of the subject property for tax year **2005** was originally set to be heard before Administrative Judge Mark J. Minsky.<sup>7</sup> At the Assessor's request, the hearing scheduled for May 24, 2006 in her office was converted to a pre-hearing conference. It was attended by Ms. Haislip; Mr. Lee; and Saddlewood representatives Gerald Anderson, Karen Anderson, and Marla Nielson. Judge Minsky's ensuing order of June 1, 2006 recited that:

1. The assessor of property will be allowed until July 8, 2006 to furnish the taxpayer with her completed valuation analysis; and
2. The parties will be allowed until July 31, 2006 to pursue settlement negotiations and file a status report with the administrative judge.

Twelve days before the pre-hearing conference, the Assessor's office had sent notice of a slight increase in the appraisal of the Saddlewood Apartments for tax year **2006** to the property owner at its Brentwood, Tennessee mailing address.<sup>8</sup> Affidavit of Linda J. Haislip, Exhibit A. This notice, which was promptly received by Saddlewood, contained information concerning the taxpayer's right of appeal to the county board. Pursuant to Tenn. Code Ann. section 67-5-508(a)(2), the Assessor also caused to be published in May 22, 2006 edition of the *Marshall County Tribune* a legal notice specifying the dates on which the county board's regular annual session would begin and end (June 1 and June 7, 2006, respectively). Affidavit of Linda J. Haislip, Exhibit B.

According to the affidavit of longtime Assessor Haislip:

During the pre-hearing the representatives of Saddlewood was [sic] informed that they would need to appeal the 2006 appraisal and assessment to the County Board by Judge Minsky as well as myself. I informed Mr. Anderson of the new value for Tax Year 2006 and the dates the County Board would be meeting. Furthermore, I offered to schedule a hearing before the County Board on the Taxpayer's behalf. Mr. Gerald Anderson and Ms. Karen Anderson declined to schedule a hearing.

*Id.* at pp. 2-3.<sup>9</sup>

But Ms. Nielson had no recollection of any such conversation. The pre-hearing conference left her with the impression that Saddlewood should await the completion of the discovery process and settlement negotiations referred to in Judge Minsky's pre-hearing conference order before taking any further action. Sometime thereafter, Saddlewood engaged Mr. Catignani for assistance in connection with these appeals.

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<sup>7</sup>Previously, Saddlewood had appealed the assessment of the subject property to the State Board in tax year 2004. That appeal was ultimately withdrawn and dismissed.

<sup>8</sup>See Tenn. Code Ann. section 67-5-508(a)(3). This \$50,900 increase was apparently due to the completion of a new improvement.

<sup>9</sup>Ms. Haislip reiterated the substance of her affidavit at the hearing.

Generally, except in the event of insufficient notice of an assessment, an appeal to the State Board must be preceded by a complaint and appearance before the local board of equalization. See Tenn. Code Ann. sections 67-5-1401 and 67-5-1412(b)(1); Tenn. Atty. Gen. Op. 92-62 (October 8, 1992). However, as amended by Chapter No. 133 of the Public Acts of 2007, Tenn. Code Ann. section 67-5-1412(e) provides (in relevant part) that:

The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.

In one of the earlier cases involving this "reasonable cause" statute, the Assessment Appeals Commission held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. **It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to illness or other circumstance beyond the taxpayer's control...**[Emphasis added.]

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2-3. But as proclaimed in Memphis Mall Holdings, LLC (Shelby County, Tax Year 2003, Final Decision and Order, December 22, 2004), the Commission "has shown great sensitivity in situations where a taxpayer has been misled, whether intentionally or otherwise, by government officials." *Id.* at p. 3.

Nothing in the record suggests that any "circumstance beyond the taxpayer's control" precluded Saddlewood from contesting the valuation of the subject property for tax year 2006 before the county board. Nor does the proof indicate that either Ms. Haislip or Judge Minsky "misled" the taxpayer concerning the right or necessity of such an appeal.

By sending the aforementioned assessment change notice and publishing notice of the county board's meeting days in a local newspaper of general circulation, the Assessor fulfilled her statutory responsibilities under Tenn. Code Ann. section 67-5-508. Ms. Haislip was surely under no additional obligation to remind or counsel the taxpayer as to its appeal rights.

Further, by its express terms, Judge Minsky's pre-hearing conference order only related to Saddlewood's appeal with respect to tax year 2005. One could not reasonably construe that order as having any bearing on the valuation of the subject property in 2006.

There is some precedent for allowing an "amendment" of an unresolved appeal to the State Board to include a subsequent tax year in which the property owner made no complaint to the local board of equalization. To the best of the administrative judge's knowledge, however, this practice has not been extended to cases where – as here – the assessment of the property in question in the subsequent tax year has increased.

For these reasons, the Assessor's motion to dismiss Saddlewood's 2005 appeal must be granted.

**Valuation (Tax Years 2005 and 2007).** The taxpayer's agent relied mainly, and the Assessor entirely, on a discounted cash flow (DCF) analysis to estimate the market value of the subject property. There was substantial accord as to the length of the holding period; and Mr. Hoch's annual expense escalation rate (3.00%) actually exceeded that of Mr. Catignani. In most other material respects, however, the parties staked out the divergent positions of the combatants in Acorn Hills/Brisben, LP, supra. The market values indicated by the respective DCFs in this proceeding were as follows:

<u>Tax Year</u>	<u>Taxpayer</u>	<u>Assessor</u>
2005	\$3,377,000	\$4,912,000
2007	\$3,262,000	\$4,332,000

Without reiterating the discussion in the Acorn Hills/Brisben opinion, the administrative judge respectfully recommends the following revisions to DPA's DCF analyses:

**Tax Year 2005** (Assessor/DPA Hearing Exhibit, pp. 77-78):

Potential gross (restricted) rental income escalation: 1.50% per year (beginning with year 2)  
Vacancy and collection loss: 3.00% of potential gross income (beginning in year 1)  
Expense escalation: 3.00% per year (beginning with year 2)  
Discount rates: 10.40% for NOI excluding tax credits; 8.00% for tax credits  
Years of tax credits remaining: 9  
Terminal capitalization rate: 8.90%  
Reversionary value: based on capitalization of rent-restricted NOI at end of holding period (less selling expenses)

**Tax Year 2007** (Assessor/DPA Hearing Exhibit, pp. 85-86):

Potential gross (restricted) rental income escalation: 1.50% per year  
Vacancy and collection loss: 3.00% of potential gross income (beginning in year 1)  
Expense escalation: 3.00% per year (beginning with year 2)  
Discount rates: 8.50% for NOI excluding tax credits; 7.00% for tax credits  
Years of tax credits remaining: 7  
Terminal capitalization rate: 7.90%  
Reversionary value: based on capitalization of rent-restricted NOI at end of holding period (less selling expenses)

Order

It is, therefore, ORDERED that the taxpayer's appeal of the assessment of the subject property for tax year 2006 be dismissed for lack of jurisdiction.

Within ten (10) days from the date of entry hereof, the Assessor and/or DPA submit for the record revised DCF spreadsheets reflecting adjusted values for the subject property consistent with the above findings for tax years 2005 and 2007. It is further ORDERED that the subject property be valued as follows for those two tax years:

**Tax Year 2005:** Assessor/DPA adjusted DCF value, equalized by application of the overall appraisal ratio certified by the State Board for Marshall County (.9625), less \$91,427 (appraised value of tangible personal property).

**Tax Year 2007:** Assessor/DPA adjusted DCF value, less \$142,855 (appraised value of tangible personal property).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29<sup>th</sup> day of October, 2007.



PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: John O. Catignani, Property Tax Consultants  
Robert T. Lee, General Counsel, Comptroller of the Treasury  
Linda Haislip, Marshall County Assessor of Property